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FOSTERING COMPETITIVE SHIPPING SERVICES (IMPACT OF PROGRESSIVE LIBERALIZATION ON THE DEVELOPMENT OF SHIPPING SERVICES)

Progressive liberalization and the development of shipping services in developing countries: country experiences

Report by the UNCTAD secretariat

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SUMMARY AND CONCLUSIONS

(i) Examples of experiences with liberalization given in this report support the observation made in an earlier report Progressive liberalization and the development of shipping services in developing countries, (TD/B/CN.4/34) that liberalization may have a substantial impact on the ability of shipping companies in developing countries to participate in the supply of services. However, the direction of that impact is still not clear. Some companies in Latin America, which have operated for many decades under the protection of cargo reservation, have suffered severe financial losses and some have gone out of business, possibly as a direct result of liberalization. But other companies in the same region, and also in Asia, have expanded and remained profitable even in the face of liberalization and increasing competition from mainline global operators from developed countries. These countries have also benefitted from modern management techniques.

(ii) Shipping companies of developing countries which have operated successfully in newly liberalized environments are those that have introduced radical changes in operations, particularly by changing from break-bulk to containerized operations, in certain cases relying on chartered tonnage or slots and entering into consortia or other forms of cooperation with other shipping companies, especially from developed countries.

(iii) In addition to the experiences of a sample of individual shipping companies, this report examines some countries' participation in shipping as indicated by tonnage ownership. In this regard, also, there is no clear trend that shows the impact of liberalization on ownership. Countries that have liberalized and those which have maintained protectionism have had both an increase as well as a decline in tonnage ownership. It is evident that their experiences since the wave of liberalization started in the early 1990s do not demonstrate a clear trend. More time is required before stable trends can be established.

(iv) Some developed countries demonstrate the important role being given to competition rules as a vital element in safeguarding competition. This is a lesson to developing countries: as these countries liberalize their shipping services, measures must be taken to ensure that an environment is created in which companies or groups of companies are prevented from using their dominant positions or market power to the detriment of other operators or transport users.

INTRODUCTION

(v) This report has been prepared pursuant to the recommendations of the Standing Committee on Developing Services Sectors: Shipping, adopted at its second session, in which the Committee, *inter alia*, requested the UNCTAD secretariat to continue monitoring and reporting on:

(a) progressive liberalization and associated measures aimed at fostering fair and competitive shipping services;

(b) the results and problems of countries which have liberalized their shipping services;

(c) measures which countries have adopted, or might consider adopting, to correct problems arising from progressive liberalization; and

(d) prior and/or accompanying measures which might be considered by countries willing to implement progressive liberalization.

(vi) This report focusses on examples of policies of liberalization and their impact on selected developing countries. It also gives a brief outline of measures which countries have or might adopt to correct problems arising from progressive liberalization.

Chapter I

REVIEW OF DEVELOPMENTS

1. Pursuant to the work programme in Shipping, Ports and Multimodal Transport, adopted by the Standing Committee on Developing Services Sectors, Shipping, at its first session, the UNCTAD secretariat prepared a report entitled Progressive liberalization and the development of shipping services in developing countries (TD/B/CN.4/34), which examines examples of shipping policy reforms in developing countries and their possible consequences. It also suggested issues that need to be addressed when countries formulate their liberalization programmes for shipping. Having considered that report at its second session, the Committee recognized the wide diversity of interests and of development levels among countries. In view of this diversity and given the limited experience with liberalization so far, the Committee requested the secretariat to continue monitoring and reporting on the subject.

2. This report should therefore be considered as a supplement to the report in TD/B/CN.4/34. It updates the information concerning the policies of certain countries covered in TD/B/CN.4/34 and provides an account of policies of other countries not included therein.

3. In a note verbale, the Secretary General of UNCTAD asked Governments of States members of UNCTAD to provide information on, *inter alia*:

(a) shipping sectors and related policies with a view to determining factors that contribute to or impede the development of national shipping industries, in particular promotional and regulatory measures, including privatization, that are designed to improve the competitiveness of national lines;

(b) measures undertaken to liberalize shipping services, and the subsequent results and experiences;

(c) measures which countries have adopted, or might consider adopting, to correct problems resulting from the liberalization of shipping services.

4. This report is based on the responses to the note verbale, some of which are reproduced verbatim in the annex and in the addendum to this report. Additional information was obtained from various published sources.

5. While the report in TD/B/CN.4/34 focussed on examples of policies, measures and experiences of developing countries, this report also includes examples from developed countries, especially with regard to measures adopted to correct problems arising from liberalization. Chapter II provides a summary of policies and measures that countries adopt aimed at fostering fair and competitive shipping services, and their experiences. Chapter III reports on measures which countries have adopted or might adopt to correct problems arising from progressive liberalization, as well as an outline of prior and/or accompanying measures which might be considered by countries willing to implement progressive liberalization.

6. In order to provide examples of shipping policies adopted by different countries, the replies of Australia and the Republic of Korea are annexed to this report, and those of Spain and Uruguay are published in an addendum to this document (UNCTAD/SDD/SHIP/5/Add.1). These replies demonstrate the need to implement liberalization through a gradual relaxation of market access restrictions and, above all, through the adoption of support measures such as competition rules or positive measures aimed at ensuring the competitiveness of national carriers.

Chapter II

POLICIES AND MEASURES ADOPTED BY COUNTRIES TO FOSTER FAIR AND COMPETITIVE SHIPPING SERVICES AND EXPERIENCES GAINED

7. An assessment of changes in shipping policies and their impact can be made by comparing conditions between liberalized and protected shipping markets, using indicators such as changes in ship ownership, quality of services, freight rates, etc. The comparison may be between countries that have adopted liberalized policies and those which maintain protectionist measures, or by comparing the indicators in the same countries, over time, under changing policies. The main sources for such comparisons have been developing countries that had maintained strong protectionist shipping policies until the late 1980s, but that later adopted liberalized policies.

A. Impact on participation by developing countries in fleet ownership and operation

8. In TD/B/CN.4/34, some examples of developing countries that had changed policies are given. Subsequent developments are a further indication of the consequences of liberalization, particularly in Latin American countries where shipping policy changes have been most pronounced. Individual cases which relate to developments that occurred during the 1990-1994 period are summarized in table 1. Much of the information on developments related to liberalization is found in isolated accounts, collected in table 1, in the maritime press. Because of the nature of the sources, table 1 does not contain a unified or consistent description of developments in the countries concerned, and may not necessarily agree in all aspects with the official views of the countries concerned. Nevertheless, it describes the experiences of companies which previously benefited from various degrees of government protection and which were later exposed to competition or a liberalized environment.

9. The table shows that while certain state-owned or formerly state-owned companies have been adversely affected by liberalization, others have been able to maintain their profitability and even to expand. The sample examined here is limited, but as more experience is gained in other countries, more definitive conclusions will be possible.

Table 1

Selected examples of liberalization measures and related developments in shipping services

1. COUNTRY/REGION: Argentina
POLICY: Abolition of cargo reservation and introduction of liberalization
DEVELOPMENTS: "ELMA, Argentina's Government-owned line, has ended its monthly service to the West Coast of the United States. This is the Argentine Government's latest move in a three-year effort to privatize the ailing line. The Government line could not find a buyer willing to take over the entire operation, including 26 aging vessels. Government-appointed administrator is attempting to sell the routes off separately and has set a September deadline for divestiture of ELMA's service to the U.S. Atlantic and Gulf Coasts, North Europe and the Mediterranean. The administrator was mandated to institute management changes that would make the line more saleable. He cut the staff in half, closed offices around the world and sold off the headquarters building. Some vessels had also been sold ... But most of the line's fleet were built in the 1970's and would need considerable modernization to operate successfully in a trade dominated by up-to-date containerships ... Dissolution of ELMA underscores the trend toward privatization in South America, as governments seek to open up their markets by scrapping regulations which gave national-flag lines priority rights to export shipments."
Source: *World Wide Shipping*, May 1994.

2. COUNTRY/REGION: Argentina

POLICY: Removal of cargo reservation and introduction of privatization

DEVELOPMENTS: "... For the shipping sector the effects of deregulation have been clear and date from policy adopted in 1991 when cargo reservation was withdrawn. Alongside this there was a decree which permitted the temporary flagging out of tonnage. The thinking behind this was to allow shipowners recourse to the benefits of offshore operations while the Argentinean register was overhauled and made more competitive. This was supposed to have taken place by the beginning of 1994 but did not and the de-registration was extended. This has been behind the growth of the foreign flag element of the fleet - in June 1994 some 60 per cent of Argentinean-owned tonnage. It has just been a matter of flagging out, not growth. The order book has been at nil for several years which is largely the result of the withdrawal in 1991 of the shipbuilding fund which put a stop to newbuilding programmes. While there are a number of relatively dynamic and aggressive private sector companies in Argentina, the main company - liner operator Empresa Linea Marítimas Argentinas (ELMA) - is in the State sector. It has clocked up incredible losses over the years, primarily by being unable to remain competitive with an old fleet once cargo reservation was withdrawn. It is in the process of radical restructuring and slimming down in order to make it more attractive to buyers, but the prospects are not bright - several attempts to auction it off have failed and liquidation must be a real possibility."

Source: *Lloyd's Shipping Economist* (London), September 1994

3. COUNTRY/REGION: Malaysia

POLICY: Privatization

DEVELOPMENTS: "... The Malaysian International Shipping Corporation (MISC) which suffered losses in 1982 and 1983, is not only firmly back on the profit track but is well poised to take advantage of any recovery in the shipping industry. Since its listing on the Kuala Lumpur Stock Exchange in February 1987, foreigners have shown keen interest in the shipping stock. MISC was initially set up as a joint-venture company between the Government and a group of private entrepreneurs in shipping with a view to helping Malaysia develop into a maritime nation ... Industry sources expect MISC to sail full steam ahead in its profitability course as it is now in a leaner position. This followed intensified cost control and reorganization programmes adopted in the last few years to improve profit margins ... MISC recorded a 14.4 per cent improvement in turnover for the financial year ended 31 December 1992 to RM 1.98 billion from RM 1.73 billion in 1991. For the period ending 31 December 1993, analysts forecast that MISC will be able to achieve a pre-tax profit of RM 560.7 million ... MISC is currently diversifying its earnings base by venturing into suitable non-shipping areas. These include ship-building and repair as well as container haulage, warehousing and trucking which are aimed at providing a comprehensive and fully integrated transport and distribution network to its clients."

Source: Economic Planning Unit, Prime Minister's Department, Privatization in Malaysia, May 1993.

4. COUNTRY/REGION: Brazil

POLICY: Abolition of cargo reservation

DEVELOPMENTS: "Lloyd Brasileiro is bankrupt, its continued survival dependent on government support. Several attempts to sell or privatize the company have failed mainly due to its large debts which potential investors avoid to inherit. Many of the company's vessels are either laid-up or taken out of service. The overall future of the company's existence is in doubt. On the other hand, other national operators e.g. Alianca and Transroll have experienced fast growth and are expected to consolidate their positions through fleet expansion and reliance on cooperation with other lines."

Source: *Lloyd's List* (London), 7 December 1994.

5. COUNTRY/REGION: Brazil

POLICY: Abolition of cargo reservation

DEVELOPMENTS: "The Brazilian Government has failed to sell off national liner company Lloyd Brasileiro. No bids were received for the eighty per cent holding on offer ... A group of Brasileiro's employees, NAVEG, has since submitted an offer at the minimum price, claiming it was unable to secure financial backing by the auction date. If this offer is refused, the Government must decide whether to attempt another bid, or to liquidate the company, which could cost up to $80m ... An attempt to sell Brazil's State-owned liner company Lloyd Brasileiro on May 11 dissolved in chaos. Eight hundred LloydBras workers demonstrated outside the stock exchange, protesting against a failure to pay April wages ... Predictably, no bidders came forward and despite prolonging the tender by a day the State did not find a buyer. The State is now considering closing down LloydBras, which would mean writing off $80m or trying another public sale, this time at a reduced price. Local owners say no one will be interested until the past debts of the company are written off. At the moment, LloydBras is losing $2m a month, so a decision on the future of the company is urgent ... The Brazilian congress has voted to exclude State-owned line Lloyd Brasileiro from the country's privatization programme. Operation of the company will now be transferred to the employees. The Brazilian Government, together with the merchant maritime national fund and the German KfW bank, will have to assume company debts of almost $200m, while Congress has also directed the Government to assume other debts totalling $74.25m and a cash injection of $33.5m."

Source: *Fairplay* (London), 7 April, 26 May and 23 June 1994.

6. COUNTRY/REGION: Chile

POLICY: Liberalization of shipping in Latin America as a whole

DEVELOPMENTS: In Chile, "the cold winds of globalization are making local companies shiver. Nowhere is this more visible than in the shipping companies. CCNI and CSAV had tidy numbers in almost captive markets served by direct trades. But with the entry of Maersk, Sea-Land and Hapag-Lloyd, armed with massive capacity, a feeder mentality, and sales force togged up with modern technology, freights tumbled, volumes stayed flat, and local shipping companies start to wonder what to do next. The shipping companies are trying to invest their way out of trouble, buying new tonnage and making agreements with big carriers. Chile's seaborne trade is growing, but it is not growing anything like fast enough to absorb the massive new capacity which international majors are putting onto the west coast of South America. But while Maersk can write off its costs on a global basis, Chilean lines start from a local, not even regional, base. They are feeling the pressure. In the longer term the Chilean companies have to decide how to compete with feeder-based systems which are a new kind of competition to their traditional direct services ... Valparaiso-based CSAV has a well-deserved name for aggression in Latin America. In 1992 it made substantial profits. But in 1993, those profits were halved to $31.5m, which the company blames on the intense new competition on the west coast. The company is fighting back with new tonnage and new alliance with CCNI, Nedlloyd and Lykes."

Source: *Fairplay* (London), 26 May 1994.

7. COUNTRY/REGION: Colombia
POLICY: Abolition of cargo reservation and introduction of privatization
DEVELOPMENTS: "The latest line to seek buyers is Flota Mercante Grancolombiana (FMG), based in Bogota. Forty-five per cent of the shares in the company are for sale. The reason for this sale - existing shareholders wanting to pull out of a non-core investment - differs from the other lines, where cash was needed to pay off massive debts ... FMG's fleet also differs markedly from its Latin American neighbours ... The line has joint ventures and carrying agreements with a number of Latin American and European companies on its main South and North American to Europe and Far East services. Flota Mercante generated revenue of more than $200 million in 1993. Its non-shipping interests are widespread, and include a joint venture in the shipment of Colombian coal, a minibulk service along the Colombian coast and in the region, port operations, ship management and container freight stations, and even airline servicing at domestic and international airports. Flota Mercante has developed steadily along with Colombia's growth, unlike its neighbours, which went the other way."
Source: *Fairplay* (London), 12 May 1994.

8. COUNTRY/REGION: Colombia
POLICY: Abolition of cargo reservation and introduction of privatization
DEVELOPMENTS: "Investors will acquire a combined 45 per cent shareholding in Flota Mercante Grancolombiana (FMG) from its two traditional shareholders. Seventeen prospective investors showed interest including top shipping lines none of which was Colombian. FMG's sought-after shareholding offer points out the recent failed privatization attempts of Lloyd Brasileiro and Elma, the State carriers of neighbouring Brazil and Argentina, respectively. Before offering the shares, the company was completely restructured by eliminating overstaffing (from around 1,400 employees to less than 400), operating on market principles and moving from largely break-bulk services to containerized market ... In 1993, FMG carried around 1.5 million freight tonnes, 85 per cent of which moved containerized. This compares with pre-restructuring containerization ratio of 15 per cent in 1991. The company expanded its cross trading liftings significantly especially by operating in other countries of the region as countries were opening up their shipping services. As part of its restructuring, the company also entered into joint services and consortia with other operators in a number of mainline trades. The company also flagged out some of its ships and adopted Total Quality Management and a programme to speed up container equipment logistics."
Source: *Containerisation International* (London), July 1994.

9. COUNTRY/REGION: Mexico
POLICY: Deregulated shipping industry and introduction of privatization
DEVELOPMENTS: "Mexico's major shipping company is Transportación Marítima Mexicana (TMM). Privatized in 1991, it has diversified rapidly into reefer shipping and tankers as well as adding new services and ships to its existing liner network. The eventual aim is to divide business equally between shipping, trucking and terminals. This will require several partnership deals, including a recent agreement with American President Lines for the Pacific routes. TMM reported a difficult 1993 with pre-tax profits down from 1992 ... However, 1993 was the year when TMM took a series of brave decisions which should offer handsome rewards in the mid-1990s. These include an order for newbuilding containerships and the reduction of its commitment to the car carrying and dry bulk business. The line has already signed operating agreements with a number of other lines."
Source: *Fairplay* (London), 14 July 1994

10. COUNTRY/REGION: Sri Lanka
POLICY: Abolition of cargo reservation
DEVELOPMENTS: "In ship owning and operating, the big change last year (1994) was likely to be the sell-off of the State-owned line - Ceylon Shipping Corporation (CSC) ... Until the liberalization of the shipping industry in 1990, State-owned CSC enjoyed a dominant position in the Sri Lanka general cargo and container trades. Under the cargo reservation system, the national carrier was granted all the cargo it could carry. Liberalization changed that virtually overnight. Trade was opened up to the free market, and almost all the big liner companies, and a lot of smaller ones, moved in. CSC was operated as part of the government bureaucracy and was widely regarded as lacking commercial drive. Nevertheless, since liberalization CSC has acted to slim down and, at the same time, establish itself as a major player in the subcontinent-northern Europe trade. The company dropped its Far East service but replaced it with a slot chartering arrangement with CMA. From being largely dependent on Sri Lankan cargoes, CSC has become an aggressive cross-trader. Most of its owned ships are gone."
Source: *Fairplay* (London), 31 March 1994.

10. In addition to the developments summarized in table 1, the single important indicator of the impact of liberalization is change in tonnage ownership. Table 2 shows trends in tonnage owned, over the 1985-1993 period, by selected developing countries - both those that have introduced liberal policies and those which have maintained protectionism.

11. It is apparent that while countries which have introduced policy changes, such as those of Latin America, have shown significant declines in tonnage, their experience has also been shared by other countries, such as those of West Africa, which have not liberalized. Furthermore, other countries which adopted a generally liberal policy have the same or increased levels of participation. Figures on ownership may to some degree be distorted by other factors such as flagging out and the use of chartered tonnage or slots. In addition, it needs to be emphasized that general shipping market conditions also contribute to a country's ability to participate in shipping. It may therefore be difficult, especially in the short run, to isolate the separate impact of liberalization.

Table 2

Merchant fleets of selected developing countries by flag of registration
1985 and 1989-1993
(Thousand dwt)

COUNTRY	YEAR	TOTAL FLEET	TANKERS	BULK CARRIERS	GENERAL CARGO	CONTAINER SHIPS
Argentina	1985	3 569	1 342	865	1 127	22
	1989	2 764	900	804	763	71
	1990	2 872	951	880	717	67
	1991	1 991	673	456	592	67
	1992	1 208	351	105	487	75
	1993	1 038	173	105	478	75
Brazil	1985	10 040	3 265	4 756	1 542	56
	1989	10 063	3 242	5 091	1 092	112
	1990	10 005	3 314	5 176	885	112
	1991	9 722	3 486	4 931	678	112
	1992	9 078	3 587	4 250	544	182
	1993	8 807	3 739	3 884	522	182
Cameroon	1985	89	0	0	84	0
	1989	39	0	0	36	0
	1990	39	0	0	34	0
	1991	40	0	0	34	0
	1992	40	0	0	34	0
	1993	40	0	0	34	0
Chile	1985	702	1	465	149	0
	1989	876	0	552	198	0
	1990	883	6	554	202	0
	1991	885	6	554	182	0
	1992	819	6	522	97	0
	1993	873	6	587	69	0
Colombia	1985	471	52	71	347	0
	1989	546	15	157	355	0
	1990	541	16	157	348	0
	1991	464	10	157	284	0
	1992	379	10	130	223	0
	1993	360	10	130	202	0

COUNTRY	YEAR	TOTAL FLEET	TANKERS	BULK CARRIERS	GENERAL CARGO	CONTAINER SHIPS
Côte d'Ivoire	1985	175	1	0	155	0
	1989	100	0	0	85	0
	1990	100	0	0	85	0
	1991	99	0	0	85	0
	1992	100	0	0	87	0
	1993	142	0	22	106	0
Ghana	1985	177	0	0	135	0
	1989	114	1	0	79	0
	1990	110	1	0	73	0
	1991	133	1	0	82	0
	1992	132	1	0	82	0
	1993	108	1	0	57	0
India	1985	10 761	2 968	5 155	2 385	2
	1989	10 207	2 905	5 192	1 626	0
	1990	10 497	2 890	5 469	1 607	0
	1991	10 359	3 016	5 266	1 466	0
	1992	10 575	3 533	4 979	1 374	0
	1993	10 674	3 774	5 021	1 133	53
Indonesia	1985	2 674	822	193	1 341	74
	1989	2 742	966	210	1 245	75
	1990	2 910	966	202	1 374	98
	1991	3 159	989	220	1 552	98
	1992	3 172	980	245	1 550	106
	1993	3 212	987	245	1 576	93
Malaysia	1985	2 583	380	826	666	224
	1989	2 364	284	635	699	231
	1990	2 460	307	635	676	233
	1991	2 658	412	648	607	327
	1992	2 960	434	798	658	387
	1993	3 165	466	1000	643	349
Mauritius	1985	54	0	29	21	0
	1989	216	92	66	24	29
	1990	141	0	79	28	29
	1991	112	0	79	29	0
	1992	175	0	127	39	0
	1993	286	0	191	83	0

COUNTRY	YEAR	TOTAL FLEET	TANKERS	BULK CARRIERS	GENERAL CARGO	CONTAINER SHIPS
Mexico	1985	2 077	884	526	238	0
	1989	1 883	807	346	62	12
	1990	1 803	841	266	80	12
	1991	1 543	806	26	92	0
	1992	1 505	797	0	63	0
	1993	1 536	805	47	20	0
Morocco	1985	680	111	212	107	10
	1989	594	19	163	129	10
	1990	618	19	163	151	10
	1991	593	18	163	121	10
	1992	603	25	163	126	10
	1993	439	25	0	120	10
Nigeria	1985	607	292	0	288	0
	1989	737	435	0	263	0
	1990	727	436	0	246	0
	1991	726	442	0	242	0
	1992	752	457	0	250	0
	1993	749	459	0	246	0
Sri Lanka	1985	974	248	382	340	0
	1989	371	15	55	297	0
	1990	528	139	188	196	0
	1991	507	139	180	182	0
	1992	446	132	180	129	0
	1993	453	132	180	137	0
Venezuela	1985	1 422	793	128	393	0
	1989	1 727	759	264	364	3
	1990	1 383	759	247	277	1
	1991	1 425	792	246	278	1
	1992	1 274	761	190	240	1
	1993	1 453	719	276	174	1

Source: Based on UNCTAD, *Review of Maritime Transport*, various issues.

B. Impact on the level and quality of services

12. In TD/B/CN.4/34, it is stated that liberalization tended to improve shipping services. For example, in Sri Lanka from 1989, when liner shipping was liberalized in that country, until 1992, there was a sharp increase in the number of ship sailings to Sri Lankan ports as operators responded to the removal of cargo restrictions.[1] Data for 1993 show that the rising trend in ship sailings continued, with the number of sailings increasing from 5,825 in 1992 to 7,267 in 1993.

13. As mentioned in table 1, in Latin American trades, the number of liner operators, as well as their composition in terms of flag registration, has changed considerably following liberalization. The number of operators from outside the region has increased in response to the relaxation in cargo reservation laws.[2] Major mainline operators with stronger financial and technological endowments have captured a very substantial share of the cargoes traditionally available to the shipowners of the region. In the process the supply and quality of services provided appears to have improved.

14. Table 3 shows the number of lines operating on different liner trade routes for the period 1990-1994. The data confirm the observation made in TD/B/CN.4/34, that there has been a high incidence of entries into and exits from individual routes over the years. Without a detailed study of individual routes, it is not possible to provide a full explanation of these changes. They may in part reflect the opening-up of some previously protected trades. In certain cases they may result from competitive forces that lead to the elimination of some operators from a trade. In other routes, the changes may be attributed to periodic market fluctuations, when operators respond to changes in available cargo volumes. Monitoring these changes over the long run may help to determine the extent to which there is a consistent movement towards the concentration of operators on routes.[3]

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[1] See UNCTAD, Progressive liberalization and the development of shipping services in developing countries, TD/B/CN.4/34, Table 3.

[2] The number of operators alone may not give the full magnitude of the overall increase in ship operations in so far as it does not reflect the use of vessel sharing and slot chartering arrangements between operators, the increase in service frequencies and the overall volume of tonnage operated.

[3] The problems of concentration and market power are outlined in chapter III.

Table 3

Number of lines operating on different liner trade routes, 1990-1994

Name of trade route	1990	1991	1992	1993	1994
Australasia-E. Asia	20	21	25	24	16
Australasia-Europe	17	19	15	16	13
Australasia-Japan/Korea	21	25	22	21	19
Australasia-Mediterranean	14	19	16	16	14
Australasia-N. America W. Coast	9	9	10	11	11
Australasia-S. E. Asia	17	23	27	31	31
C. America-Europe	24	18	20	20	21
Caribbean-Europe	21	22	26	28	23
Caribbean/C. America-N. America Gulf Coast	16	18	19	20	27
E. Africa-Europe	17	15	15	11	12
E. Africa-Far East	7	8	8	8	7
E. Africa-Mediterranean	17	10	15	15	14
E. Africa-N. America	6	4	4	3	3
Europe-Far East	37	41	38	41	35
Europe-Indian subcontinent	25	29	27	25	24
Europe-N. America E. Coast	27	27	27	28	27
Europe-N. America Gulf Coast	14	15	16	14	19
Europe-Near East	33	36	40	36	33
Europe-S. America E. Coast	24	34	36	34	32
Europe-S. America W. Coast	14	19	20	17	21
Far East-Indian subcontinent	28	14	24	25	32
Far East-N. America Gulf Coast	15	8	9	8	9
Far East-N. America W. Coast	26	29	28	27	26
Far East-Near East	11	14	16	18	17
Far East-Red Sea	13	13	17	20	19
Indian Ocean-Europe	10	8	9	10	10
Indian subcontinent-Mediterranean	19	16	23	20	15
Indian subcontinent-Mid-East	14	21	27	23	31
Indian subcontinent-N. America	12	9	12	13	18
Mediterranean-N. America E. Coast	24	16	22	21	18
Mediterranean-S. America E. Coast	14	16	21	21	18
N. Africa-Europe	20	28	23	24	21
Southern Africa-Europe	14	15	17	14	16
Southern Africa-Far East	15	17	19	18	18
Southern Africa-Mediterranean	10	12	12	11	12
Southern Africa-N. America	5	6	7	7	7
W. Africa-Europe	45	46	38	35	28
W. Africa-Far East	13	13	14	12	14
W. Africa-Mediterranean	14	15	13	12	13
W. Africa-N. America	15	11	10	8	8

Source: *Containerisation International Yearbook* (London), various issues.

Summary

15. In the short time since the Committee considered TD/B/CN.4/34, only a few developments and demonstrations of the impact of liberalization have been recorded. The process of liberalization has not been finalized and results are still to be determined. However, the data and information given in tables 1 and 2 demonstrate that the impact of liberalization on shipping in developing countries has been mixed. Some individual shipping companies have continued to experience severe financial difficulties, largely as a result of losing government protection and exposure to competition. On the other hand, some companies have managed to survive and even to expand, usually by modernizing their fleets and by operating under cooperative arrangements with shipping companies from other countries.

Chapter III

MEASURES ADOPTED OR TO BE ADOPTED TO CORRECT PROBLEMS WHICH ARISE FROM LIBERALIZATION AND MEASURES WHICH MIGHT BE CONSIDERED BY COUNTRIES WILLING TO IMPLEMENT PROGRESSIVE LIBERALIZATION

A. Measures to deal with market power and anti-competitive practices

16. In TD/B/CN.4/34, it is pointed out that liberalizing liner services helps to promote competition, but competition, in turn, tends to encourage collusive agreements between carriers so that they can counteract high capital and operating costs, as well as declining freight rates. These agreements in turn enable groups of lines to control large segments of trade and thereby put them in a position to distort freight rates and engage in anti-competitive practices.

17. In their replies to the secretariat's note verbale, some countries have outlined the measures they employed to correct these problems. In Australia, for example, while fair and open competition is encouraged in liner trades, Part X of the country's Trade Practices Act (TPA) provides safeguards aimed at ensuring that problems do not result from an abuse of the competitive environment, for example by dumping freight rates or by carriers exercising market power. Conference and non-conference operators with substantial market power are prohibited from hindering Australian flag operators to provide efficient outward liner cargo shipping services. According to the Act, all carriers, whatever their market power, are subject to: (a) provisions of Part X of the TPA that prevent anti-competitive discrimination and unfair pricing practices; and (b) provisions of Part IV of the Act which prohibit the misuse of market power. Non-conference lines are also subject to the general pro-competition provisions of Part IV of the TPA.

18. In New Zealand, the Shipping Act of 1987 was established to promote fair dealings and safeguard competition in its outward shipping services and to discourage discrimination against its shipping and trading interests. The Act allows the Minister of Transport, or a nominee, to investigate any unfair practice that has, or is likely to have, a detrimental effect on the interests of any New Zealand shipper. Unfair practices are defined in the Act and include such matters as the abuse of a dominant position by any carrier or association of carriers, and unreasonable refusal or failure on the part of a carrier to enter into negotiations or consultations requested by any New Zealand shipper relating to the terms and conditions according to which the carrier carries goods. The Minister may also issue directives to carriers that are engaging in unfair practices.

19. In its response to the note verbale, Norway noted that as part of the European Economic Area agreement, it had adopted rules corresponding to European Union (EU) regulations on the application of competition rules in the maritime transport sector. Similarly, Germany pointed out that the shipping policy framework of the EU sets out several conditions aimed at ensuring both competition within the EU's shipping market and the competitive position of member States' lines in the world shipping market. In effect, EU regulations provide a wide range of measures and give extensive powers to the Commission of the European Communities aimed at correcting problems which arise or may arise from free, competitive, liner shipping. A number of regulations passed in 1986 are intended to ensure, *inter alia*, that the competition principles of the EU's Treaty can be effectively applied to restrictive agreements or concerted practices and to abuses of a dominant position so as to leave trades open and to protect the interests of transport users. Regulations include rules concerning the freedom to provide international shipping services to, from and between EU member States, the establishment of a framework for competition, powers to take concerted action to combat protectionism by third states and powers to counter unfair pricing practices by third parties.

20. Thus EEC Regulation 4055/86 sets rules to govern the provision of maritime transport services both between member States and between member States and third countries, in order to enable shipowners to compete in the provision of maritime services without restrictions, such as unilateral cargo reservations and bilateral agreements with third countries involving cargo-sharing arrangements. The Regulation provides for the phasing out of such restrictions and generally prohibits future cargo-sharing arrangements, except under special circumstances.

21. EEC Regulation 4056/86, while providing block exemption from the EU's competition rules for conferences, at the same time prevents them from engaging in

practices which may be unduly anti-competitive. To achieve this, the block exemption is granted subject to certain obligations being met to ensure that conferences operate alongside non-conference lines and thus form only a part of an overall competitive service. The EU has not granted block exemption to other types of liner carrier agreements but has, in recent years, taken action to prevent certain agreements.

22. EEC Regulation 4057/86 is aimed at discouraging third-country shipping lines from applying unfair pricing practices which would adversely affect the EU shipping industry. It sets out procedures to be followed in the event of unfair pricing practices by third-country shipowners, for which the EU Commission is empowered to initiate investigations and to impose redressive duties on foreign shipowners deemed to have been guilty of such practices, or the Commission may accept undertakings from the foreign shipowners concerned.

23. Finally, EEC Regulation 4058/86 is intended to safeguard free access to cargoes by shipping companies of EU member States. It enables member States to take coordinated action if the competitive position of members States' merchant fleets or members States' trading interests are adversely affected by cargo reservations accorded to shipping companies of third countries or if required by an international agreement.

24. Rules aimed at safeguarding competition in maritime transport have also been established in the United States where the regulation of liner conferences has had a long history. Current shipping policy relating to conferences and other liner carrier agreements is based on the Shipping Act of 1984 which replaced the Shipping Act of 1916 and its amendments. The Act grants antitrust immunity to liner conferences and authorizes the United States Federal Maritime Commission to grant exemption from antitrust law to all types of liner carrier agreements. However, it provides that an agreement between liner carriers may be denied exemption if it is substantially anti-competitive. It also requires conferences and other carrier agreements to be open. Antitrust immunity is subject to the filing of tariffs, including service contracts, the observance of filed tariffs and fulfilment of certain common carrier requirements. The Act seeks to protect shippers' interests by permitting the establishment of shippers' associations, service contracts and independent action. It also requires conferences to provide for a consultation process in order to resolve disputes and to establish procedures for considering shippers' requests and complaints promptly and fairly.

25. It is apparent from the above examples that the establishment and application of competition rules is considered by many countries to be an important prerequisite for sustaining viable competition and the overall process of liberalization of shipping.[4] There is genuine concern, for example, that in some trades in developing countries, competition, combined with the process of containerization, tends to drive away small operators from mainline services, leaving such services to be operated mostly by a few large, global carriers that are in a position to achieve a dominant role and thereby be able to manipulate freight rates and the supply of services. If there are no rules to safeguard against the abuse of market power by such operators, the gains of liberalization may be lost.

B. Other measures

26. In addition to influencing market structures, liberalization may also create financial and operational difficulties for shipping companies, as illustrated in chapter II. To correct for these, measures may be taken either before liberalization in order to prepare shipping enterprises to withstand the consequences of liberalization, or after liberalization to overcome difficulties actually encountered by enterprises.

27. Since liberalization exposes shipping enterprises to competition, a strategy employed by some countries is to relax protectionist measures gradually before shipping services are fully liberalized. It is thus expected that when the services are fully liberalized the enterprises concerned will have gained sufficient

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[4] For an extended discussion of the role of competition policy in economic reforms, see "The role of competition policy in economic reforms in developing and other countries", revised study by the UNCTAD secretariat (TD/B/RBP/96/Rev.1).

experience with competition and therefore will be able to survive the impact of full liberalization. For example, the designated cargo system employed for selected tramp cargoes by the Republic of Korea is to be eliminated gradually, from 1993 until the year 2001, when only three cargo items will remain, but the country's waiver system, which involves protection for liner cargoes, is to be eliminated during January 1995.

28. In addition to a gradual relaxation of protectionist measures, governments may undertake an internal restructuring of shipping enterprises in order to improve their efficiency and financial performance or to enhance their equity values before they are eventually sold to private interests. Restructuring can take place through a number of measures, including reorganization of an enterprise into more rational units, replacing or upgrading tonnage or equipment, introducing technological innovations, laying off workers, revising wage scales or introducing other cost-cutting and efficiency measures. Some shipping enterprises have been restructured by being relieved of non-commercial objectives and by organizing all operations and decisions on commercial principles, for example with regard to freight rates, contracting and tendering procedures, investment criteria, etc. Another form of restructuring used is to remove or write off an enterprise's debts.

C. Liberalization through privatization

29. In certain countries, liberalization has involved privatization, either as one of the established instruments of liberalization, or as a measure used to respond to the impact of other instruments of liberalization. The latter case occurs when, for example, a relaxation of protectionist measures creates financial difficulties for state-owned shipping enterprises and forces the government to sell off the enterprises.

30. Whichever of the two factors leads to privatization, some developing countries which have experienced privatization may serve as lessons to other developing countries.[5] To privatize a shipping enterprise, a country may choose from a number of alternative methods, including the sale of shares to the general public, entry of a state-owned enterprise into a joint venture with private enterprises, direct sale or auction of vessels or related assets, management or employee buy-out, placing with institutional investors, leasing of the enterprise or its assets to private interests, contracting management to private interests, etc.

31. A priori, there appears to be no method which is appropriate for all countries and some methods may be difficult to apply in certain cases. For example, the sale of shares to the general public may be limited in a country that has no stock exchange where shares for shipping enterprises can be traded. In some countries, governments have adopted a gradual approach by initially selling only a part of an enterprise's shares and retaining a majority ownership, and then gradually selling off its holdings as the enterprise becomes profitable and attracts private investors.

32. As experienced in some Latin American countries, not all privatization is successful. In a number of cases, initial efforts to sell shipping companies or their assets have failed to attract satisfactory offers or investors. Many attempts to sell them have to be made and in some of cases governments have had to continue providing subsidies for extended periods in order to maintain the companies concerned until they can be sold. If a company cannot be sold as a going concern, the government may be forced to absorb most of the company's outstanding liabilities before private investors can be attracted and it may also have to meet the costs of reducing surplus labour as part of its efforts to attract investors. If the privatization of shipping enterprises is only a part of a wider programme involving other sectors, the costs of absorbing liabilities and paying various types of compensation may be so high that a country may need external assistance in order to implement its programme.

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[5] Privatization is a broad subject and has been addressed in a general way by UNCTAD in the context of an Ad Hoc Working Group on Comparative Experiences with Privatization. This discussion is therefore brief and is meant only to highlight areas which may be of interest to companies wishing to privatize their shipping enterprises.

Annex

Selected replies to Note Verbale No. TDN 730/2 dated 18 August 1994

Australia

(a) **shipping sector and related policies with a view to determining factors contributing to, or impeding the development of national shipping industries, in particular promotional and regulatory measures, including privatization, that are designed to improve the competitiveness of national lines**

International shipping policy

Australia's approach to international maritime transport is generally consistent with the principle of fostering free circulation of shipping in fair competition and it aims to ensure that shippers have access to the widest possible choice of reliable, efficient and competitive shipping services.

There are no restrictions to entry by foreign operators, provided vessels comply with the safety requirements of international conventions, nor are any restrictions imposed on the choice of shipping line by exporters.

Regulatory framework for international liner shipping

Australia's international liner cargo shipping services are governed by Part X of the Trade Practices Act 1974 (TPA) which is Australia's equivalent of antitrust legislation. Part X provides shipping conferences with limited exemptions from the pro-competition provisions of the TPA, provided they meet certain conditions.

In order to obtain these exemptions, outwards conferences are required to register agreements on a public record, and to negotiate minimum levels of services and other conditions of carriage with the designated peak shipper body, the Australian Peak Shippers Association. Inward conferences received automatic exemption from these obligations. Part X also includes statutory safeguards for the unhindered commercial operation of Australian flag shipping in international liner trades.

Following a major review of these arrangements in 1993 the Australian Government confirmed in October 1994 that Part X would continue in essentially its present form, principally because of the benefits it provided for Australian shippers.

Currently there is no legislation (other than safety-related requirements) regulating Australia's international bulk-shipping operations.

Cabotage

Australia has maintained a cabotage policy in respect of coastal shipping since the 1920s. It is the Australian Government's policy that wherever possible cargo and passengers moving between the Australian states should be carried on Australian controlled and crewed ships. Presently Australia's cabotage policy is administered under the Coasting Trade Provisions of the Navigation Act of 1912.

The Navigation Act requires that ships engaged in the coasting trade be licensed. It is a condition of licence that the ship's crew must be paid at Australian wage rates and that the ship must not be in receipt of a foreign government subsidy. In addition the ship must meet relevant safety and accommodation standards specified under the Act. Beyond this, a ship may be issued a licence irrespective of the flag of registry.

However, an unlicensed ship may be issued with a coasting trade permit allowing the ship to undertake the interstate carriage of cargo and/or passengers where:

- no licensed ship is available to carry the cargo and/or passengers, and
- it is considered to be in the public interest that an unlicensed ship be allowed to engage in that trade.

A permit may be issued on either a single voyage or a continuing voyage basis (for a period up to six months). However in respect of a continuing voyage permit, a more stringent public interest case is applied, in that the issue of the permit must be considered to be in the longer-term interests of the Australian shipping industry.

Shipping reform

Since the early 1980s the Government has initiated a series of shipping programmes in collaboration with shipowners and unions, with the objective of improving the efficiency and competitiveness of Australian flag shipping.

The Government's reform initiatives, which have largely focussed on crew reductions, improved training, and investment incentives as a means of improving the efficiency and competitiveness of Australian shipping, have seen

- average crew levels reduced from 33 to 18 (1994);
- ships being introduced with crews of 17 or 18;
- over one third of the fleet modernized; and
- the multi-skilling of the workforce and enhanced career opportunities.

These substantial improvements in efficiency have been achieved in an atmosphere of industrial harmony, with the full cooperation of unions and shipowners.

The Government has recently announced that it is to consider a wide-ranging package of reforms to further improve the performance of the Australian shipping industry.

Ships Capital Grants Scheme

The Ships Capital Grants Scheme was introduced as an element of the Government's shipping reform programme, in order to provide an incentive for the introduction of modern, technologically advanced vessels, which were capable of being efficiently crewed at or below benchmark levels specified in the enabling legislation. The crew levels established in the Ships (Capital Grants) Act 1987 (the Act) were set at levels consistent with the reform programme's recrewing strategy, which was aimed at reducing the average crew size of the Australian trading fleet.

The Act provides shipowners who take delivery of an eligible new ship, with a 7 per cent taxable grant based on the purchase price of the ship. Ships eligible for grant under the Act may also be eligible for accelerated depreciation. Accelerated depreciation allows the shipowner to depreciate the vessel for tax purposes at the rate of 20 per cent per annum (straight line), commencing in the year prior to delivery, in comparison to the normal depreciation regime based on the economic life of the asset.

Since the introduction of the Scheme, 17 new or replacement ships introduced to the fleet have qualified for grant. A further 17 ships have been introduced to the fleet with benchmark crew levels, but have not qualified for grant. Overall, these 34 ships represent a modernization of over one third of the trading fleet and an investment in new tonnage approaching $2 billion. The Scheme is presently intended to run until 1997.

Reconstruction of the National Shipping Line

In August 1994 the Australian Government appointed a new Board for its wholly owned national shipping company, ANL Limited (which trades as the Australian National Line). The Board's charter is to reconstruct the company by strengthening its viable parts.

The Government has also announced its plans to put the shipping line on the market. At this stage the unions have proposed developing a consortium to acquire a majority interest in the company.

(b) national practices or regulations concerning shipper/ocean carrier relations

In Australia, shipper bodies are commercially oriented organizations established and funded by and for their members and are not regulated *per se*.

Under Part X of the Trade Practices Act, exporters and producers of exports are empowered to act together in negotiations with conferences, principally through the Australian Peak Shippers Association. Under this process, differences between shippers and carriers on negotiable shipping arrangements are mostly resolved by commercial agreement.

Negotiable shipping arrangements relate to terms and conditions applicable to outwards liner services, including but not limited to freight rates, frequency of sailing and ports of call. Part X requires that conferences negotiate with the peak shipper body on these matters whenever reasonably requested to do so and to make available to them any information reasonably necessary for the negotiation. However, there is no formal requirement for the parties to reach agreement as a result of these negotiations.

Where a dispute arises, shippers have the option of making a formal complaint under Part X, which may be referred for further investigation and report by the Trade Practices Commission. The outcome of such an inquiry may give rise to specific directions by the responsible Minister.

In most cases the Government is not directly involved in the negotiating process. Where appropriate, however, an authorized officer may be called on to attend negotiations between the parties and to advise on matters relating to the administration of Part X.

(c) government policies on ship financing arrangements

Nil

(d) measures undertaken to liberalize shipping services, and the results experienced pursuant to such measures

Currently there are no specific measures being undertaken to further liberalize Australia's international liner trades.

(e) measures which countries have adopted, or might consider adopting, to correct problems resulting from liberalization of shipping services

While Australia encourages fair and open competition in its international liner trades, Part X of the Trade Practices Act (TPA) includes several safeguards which aim to ensure that problems do not result from an abuse of this openness, for example by dumping freight rates or by otherwise misusing market power.

Conferences, and non-conference operators with substantial market power are prohibited from hindering Australian flag operators from engaging efficiently in the provision of outwards liner cargo shipping services.

All carriers, whatever their market power, are subject to:

- provisions in Part X that prevent anti-competitive discrimination and unfair pricing practices; and

- provisions in Part IV of the TPA which prohibit the misuse of market power.

Non-conference carriers are also subject to the general pro-competition provisions of Part IV of the TPA.

Republic of Korea

(a) shipping sector and related policies with a view to determining factors contributing to, or impeding the development of national shipping industries, in particular promotional and regulatory measures, including privatization, that are designed to improve the competitiveness of national lines

In the middle of the 1980s, the Korean Government undertook a "Shipping Industry Rationalization Programme" under which 115 shipping lines were merged or incorporated into 34 shipping lines, as the financial structure of many Korean shipping companies deteriorated due to freight rate decline resulting from the depression of the world shipping market in the 1980s and early 1990s.

With the aim of fostering and protecting the Korean shipping industry, two kinds of Cargo Preference Systems are under operation: "Waiver System" for liner cargoes, and "Designated Cargo System" for tramper cargoes.

- Waiver System will be eliminated at the beginning of January 1995.

- Under the Designated Cargo System, 11 tramp cargo items were initially designated. However, the number has been gradually reduced since 1993. This system, under which seven items are currently on the designated cargo list, will be gradually curtailed by the year 2001 when only three items will remain.

(b) National practices or regulations concerning shipper/ocean carrier relations

The Korean Government is a signatory to the Convention on a Code of Conduct for Liner Conferences.

Article 13 of the Shipping Industry Fostering Act provides for the formation of a shipper/ocean carrier consultative body in order to ensure stable transportation of cargoes and information exchange.

(c) Government policies of ship financing arrangements

We do not have any special policy which is intended for ocean-going ship finance. Ship financing arrangements are based on the voluntary contract between ocean carriers and financers such as banks.

- Ocean-going cariers are able to use loans offered by the Korea Development Bank or foreign financial institutes.

(d) Measures undertaken to liberalize shipping services, and the results experienced pursuant to such measures

In line with international trends, Korea has steadily undertaken the policy of liberalization on a gradual basis.

Some of the liberalization measures are as follows:

- Since 1991, foreign carriers have been allowed to establish branch offices in Korea (Sea-Land, APL).

- Restriction on the investment equity by foreigners in the shipping-related businesses such as freight forwarding was eliminated (June 1993).

- The number of designated cargoes has been gradually reduced since 1993 (from 11 to 7 items).

According to the on-going liberalization schedule, the number of designated cargoes will be gradually reduced by the year 2001 so that only three items (crude oil, iron ore, and liquefied gas) will remain on the list afterwards. Also, Waiver system which covers liner cargoes will be eliminated beginning January 1995.

(e) Measures which countries have adopted, or might consider adopting, to correct problems resulting from liberalization of shipping services

When a Korean shipping operator receives disadvantageous treatment against the principle of reciprocity and equality from a foreign government or a foreign shipping operator, the Korean Government may take necessary countermeasures.

When a foreign shipping operator is construed as doing actions impeding the development of the Korean shipping industry or disturbing shipping order in the trade routes, the Korean Government may take restrictive measure on port entry of the vessel concerned.

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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

FOSTERING COMPETITIVE SHIPPING SERVICES (IMPACT OF PROGRESSIVE LIBERALIZATION ON THE DEVELOPMENT OF SHIPPING SERVICES)

Progressive liberalization and the development of shipping services in developing countries: country experiences

Report by the UNCTAD secretariat

Addendum

Selected replies to Note Verbale No. TDN 730/2, dated 18 August 1994

GE.95-51380 (E)

Spain

1. Spain's membership of the European Union means that its shipping policy is largely subordinate to Union policy, which is based on the principle of the liberalization of shipping services in conformity with the basic principles of the Treaty of Rome.

Council Regulation No. 4055/86, relating to the application of the principle of freedom to provide shipping services is, as its name suggests, the basic norm whereby the Treaty of Rome is implemented in this sphere.

As regards the possibility of fostering and granting assistance to national shipping, once again a Union norm applies. Article 93 of the Treaty of Rome prohibits the granting of aid to any sector of the economy except under specific circumstances. Were it to be otherwise, the functioning of the common market would be disrupted. Although shipping is not unaffected by these provisions, the liner conferences have been exempted from the implementation of the Treaty of Rome's provisions on competition. Council Regulation No. 4056/86, authorizes the restrictive practices of the liner conferences in the interests of stability and the other benefits accruing to the users of shipping services.

2. Act 27/1992, dated 24 November, relating to State Ports and the Merchant Marine, is the basic norm regulating shipping in Spain. The Act has made it possible to adapt Spain's normative framework and its shipping administration to the prevailing worldwide trend towards liberalization. Traditional restrictive and protectionist practices such as the prohibition on the export/import of vessels or cargo reservations have been abrogated.

Relations between the various users and providers of shipping services are based on the principle of autonomy and free consent, as is only reasonable.

Moreover, competition in world shipping services and the increasing use of flags of convenience has prompted a number of States, including Spain, to set up a second register. This was made possible in Spain by Act No. 27/1992. The recent introduction of tax and social security incentives, combined with existing advantages regarding flexibility over the nationality of crews, is expected to halt the drift towards other international registers and draw back part of the national fleet, previously registered elsewhere.

3. National policy on the financing of vessels is also determined by Union regulations. The so-called "seventh directive on aid to shipbuilding" exempts assistance to shipbuilding from the overall prohibition of the Treaty referred to above. Within certain limits, the member States of the Union may provide support for their shipyards.

Similarly, the draft agreement on shipbuilding, negotiated within the framework of OECD, and now awaiting signature, will affect both Union and national policy.

Recently, Royal Decree No. 442/1994, dated 11 March, relating to subsidies and financing for shipbuilding, updated the Spanish shipbuilding regulations to bring them fully into line with European norms and OECD conditions.

4. As has already been stated, the implementation of Regulation 4055/86 has led to the elimination in Spain of cargo reservations and opened up the cargo-sharing clauses of existing bilateral agreements with the other countries of the Union.

In addition, within the European Union context, coastal shipping services are gradually being liberalized as a result of the entry into force of Council Regulation No. 3577/92, relating to the application of the principle of freedom to provide services to maritime transport within member States.

Liberalization of international shipping services has brought in its wake a considerable reduction of the international merchant fleet. More intense competition and the consequent decline in freight rates has compelled a number of companies to register their vessels abroad or simply to cease operating. This process has also persuaded a number of shipowners to modernize their fleets.

The exigencies of restructuring and adjusting to the new competitive environment that has emerged as a result of Regulation No. 3577/92 are, if anything, even more intense. Nowadays, many Spanish shipping companies have taken a variety of measures to modernize their fleets, particularly since this market, which is of considerable importance for Spain's maritime sector, is unquestionably attractive to other fleets in the Union.

5. As regards the measures taken by Spain to resolve the problems deriving from the liberalization of shipping services, in addition to those mentioned above concerning the establishment of the Special Register of Vessels and Shipping Companies of the Canary Islands (the "second register" mentioned earlier), attention should be drawn to the major gamble Spain has taken in two important sectors: training and maritime safety. One of the main consequences of liberalization is the presence in Spanish waters of substandard vessels, which heightens the risk of accidents or shipping disasters.

In Spain, Act 27/1992, of 24 November, relating to State Ports and Merchant Shipping, together with the relevant regulations and the National Maritime Rescue and Safety Plan, which provides for the necessary operational resources, are currently being complemented by European regulations. The European Union is implementing a maritime safety policy for its waters, which is also reflected in proposed amendments to a number of international agreements entered into within the International Maritime Organization and the International Labour Organization.

Uruguay

(a) Shipping policies

The shipping policy of the Eastern Republic of Uruguay is consistent with the Government's overall policies of trade liberalization, deregulation of administrative activity and the privatization of public enterprises.

It is based on the development and promotion of subregional agreements facilitating joint and coordinated action, and the attainment, by means of domestic legislation, of suitable conditions to ensure the Uruguayan fleet is internationally competitive.

1. Measures to develop the national merchant fleet have included the adoption of domestic legislation, (Flag Act No. 16.387) which makes it possible for shipping companies to reduce costs, tax exemptions and the updating of regulations on the flagging and deflagging of vessels.

The Act also introduces measures simplifying documentation relating to the Shipping Register and governing the composition of crews for commercial operations.

As a whole, the Act introduces a series of amendments to the earlier Flag Act No. 10.945, of October 1947, as well as measures to ensure that vessels sailing under the Uruguayan flag are more internationally competitive.

(a) The registration of vessels is free of all charges and taxes.

(b) Deflagging is simple and quick, and takes three working days.

(c) No deposit is required to register vessels.

(d) There is no requirement for vessels sailing under the Uruguayan flag ever to visit Uruguayan ports.

(e) The crew required for the commercial operation of the vessel is determined by mutual agreement between the ship's owners and seamen when the vessel is registered. It may be agreed even before registration in order to make it easier for a potential owner to take a decision. If no agreement is reached, the matter is decided by a State committee which acts expeditiously so as to ensure that the vessel's operation is neither hindered nor delayed.

(f) Conditions regarding the composition of the crew are flexible and, in principle, require 75 per cent of the officers and men to be Uruguayans, although this percentage may be reduced if there are reasonable grounds. Special treatment applies to the crewing of vessels from a member country of MERCOSUR, if the previous flag of a vessel registered in Uruguay was that of one of the four member countries.

(g) There is no mandatory annual fee for the use of the flag.

2. In addition to this Act, other measures have been adopted for the development of the merchant marine:

(a) Decree 402/993, of 9 September 1993. This Decree establishes a special scheme for social security contributions for crews of Uruguayan vessels, based on a notional wages scale.

It is estimated that this measure will reduce social security contributions by approximately 66 per cent;

(b) Decree 381/993, of 24 August 1993. This Decree unified the price of fuel for vessels engaged in coasting, international-river and ocean trade, with the sole exception of pleasure boats. It is estimated that the reduction in the cost of fuel for vessels engaged in the coasting trade is approximately 50 per cent.

3. Under current legislation merchant shipping companies are entitled to tax relief that is not available to other industrial and commercial enterprises. In particular, they are exempted from payment of the following significant taxes: tax on industrial and commercial income (30 per cent on net taxable income); value added tax (12 per cent or 22 per cent on goods and services); property tax (2 per cent).

(b) National practices or regulations concerning shipper/ocean carrier relations

There are no national regulations governing relations between shippers and ocean carriers. Carriers are affiliated to the national merchant shipping chamber, while the shippers are affiliated to the Uruguayan Council of International Freight Shippers. Both bodies are non-profit-making associations registered under civil law with legal capacity.

(c) Government policies on ship financing arrangements

Decree-law No. 14.650 of 12 May 1977 declared the existence and development of the merchant marine to be in the national interest, and identified the provision of franchises and facilities and the Merchant Marine Development Fund as the main means of attaining the objective.

Duty-free privileges and facilities

Of the duty-free privileges and facilities granted by the Law, the following are noteworthy:

- Vessels of over 1,000 tonnes light displacement to become part of the national merchant marine may be imported and duty free. Vessels of less than 1,000 tonnes are also duty exempt, provided it is neither technically or economically feasible to build them in Uruguay;

- Imports of parts, equipment, spare parts, fuel and lubricants necessary for their operation are also duty free;

- No taxes are levied on sales of vessels or the provision of guarantees relating thereto, or on the registration of such sales.

Merchant Marine Development Fund

The Merchant Marine Development Fund, which is intended to provide financing for the renovation and expansion of Uruguay's merchant fleet, was established by article 183 of Act No. 14.100 of 29 December 1972. The Act also stipulates that the Fund will be constituted by, inter alia, 10 per cent of the revenue from consular levies. Decree-Law No. 14.650, together with its enabling regulations, established the Honorary Board of Directors of the Fund and determined the conditions applicable to its loans, which are as follows:

- An annual interest rate of 7 per cent on outstanding balances;
- A maximum amortization period of eight years;
- A ceiling of 80 per cent of the total value of the vessel;
- First repayment within a period of 6 to 12 months;
- Security provided by maritime mortgage, a mortgage on immoveable property located in Uruguay or other tangible or personal security;
- Insurance coverage, payable to the Honorary Board of Directors;
- Second-hand vessels may not be more than 15 years' old.

In 1992 consular levies ceased to be charged, thereby depriving the Development Fund of its main source of financing. Consequently, the Flag Act No. 16.387, of 27 June 1993, contained an article empowering the Board of Directors to secure operations with the Banco de la República.

On account of this situation, and of the conviction that the most effective means of developing the merchant marine is through soft loans for the purchase of new vessels to sail under the Uruguayan flag, there are plans for an agreement with the Banco de la República, under which the Bank will open a credit line for shipping companies whose projects have been approved by the administrative body competent for merchant shipping policy and for which a feasibility study has been made by the Board of Directors of the Development Fund.

(d) Measures undertaken to liberalize shipping service, and the results experienced pursuant to such measures

Cargo reservation

Article 25 of the Flag Act No. 16.387 contains a provision intended totally or partially to eliminate the cargo reservation system:

"Article 25. The Executive is authorized to eliminate, either totally or partially, the cargo reservation system on each of the lines on which vessels sailing under the Uruguayan flag operate, with regard to effective reciprocity and the particular conditions prevalent in the various trades or services".

On the basis of this legal authority, the Executive issued Decree No. 31/994, of 25 January 1994, abolishing the controls applicable to cargo reservation, although reservation itself was not eliminated.

In the case of those countries or groups of countries that resort to any form of restrictive practice which prevents or hinders free access to trade or cargoes by vessels under the Uruguayan flag, the controls may be reinstituted.

The application of these regulations is based on the principle of effective reciprocity, which means mutual and fair recognition of the right of access to cargoes and to participation in the actual transport of cargoes generated by a specific trade.

The definition of the principle of reciprocity is one of the keys to the success of the policy of liberalizing shipping services, and it must be a universally understood definition so that companies in the various countries can operate under the same conditions.

For this reason, although the term is defined by Uruguayan legislation, Uruguay concurs with regional policy in this respect, which points to the need for a common definition of the principle of reciprocity and its application.

Flag Act

In addition to the development and promotion of the national merchant fleet, the Flag Act also contains a number of provisions whose purpose is to liberalize shipping services.

In addition to the provision concerning cargo reservation, another provision stipulates that vessels flying the Uruguayan flag will not be compelled to call at Uruguayan ports, thereby permitting them to engage in any international trade.

Another gradual liberalization measure in the Flag Act concerns the composition of the crew for the commercial operation of vessels, and authorizes the inclusion of a fixed percentage of non-Uruguayan crew members which may be higher under certain conditions.

Ports Act

The adoption of the Ports Act has led to lower costs for port users and to shorter laytimes for vessels at the quayside, as a result of the privatization of certain port services.

Act No. 16.246, adopted in April 1992, authorized an increase in private-sector participation and the introduction of changes to port infrastructure, together with the streamlining of port management. The

liberalization planned in this sphere means the end of the National Ports Administration's monopoly of port services, thereby providing the efficient and competitive port services which is one of the priority development objectives.

Results of the liberalization measures

As the liberalization measures were adopted only a short time ago, it is not yet possible systematically to evaluate their results.

(e) Final remarks

The development policies described will enable the Uruguayan merchant marine to operate an ocean-going fleet that meets the country's requirements and is capable of attracting shipping companies and workers in order to counteract as much as possible, the lure of flags of convenience.

In addition, the promising future of the regional integration policies currently under negotiation, such as MERCOSUR and the Paraná-Paraguay waterway (Puerto de Cáceres - Puerto de Nueva Palmira), complemented by promotional measures, will make it possible to build up a fleet that can operate in these environments.

Finally, it should be pointed out that, even though the Flag Act No. 16.387 provides an extremely suitable and favourable legal framework, complementary measures are still necessary in order to render labour regulations applicable to seafarers more flexible and reduce labour costs, which are a particularly sensitive topic on account of Uruguay's highly advanced labour legislation, from which the merchant marine is not exempt.

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